IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

CUSTOM APPEAL NO.17 OF 2006

The Commissioner of Customs
(General), Mumbai. Appellant

vs.

M/s.V.B.Bhatia & Co. Respondent

Mr.S.S.Pakale with Mr.Y.S.Bhate i/b.Dr.T.C.Kaushik for the appellant.

Mr.V.M.Doiphode i/b.M/s.Mr.V.M.Doiphode & Co. for the respondent.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 28th April, 2006

P.C.

Heard Mr.S.S.Pakale, the counsel for the appellant.

2. The appeal against the order in original dated 4th April, 2005 passed by the Commissioner of Customs (General), Mumbai was heard by two Member Bench of the Customs, Excise and Service Tax Appellate Tribunal. The Member (Judicial) concluded that there was no valid evidence on record to establish that the clearing house agent was a party to the fraudulent activities and actively associated with the import or any other persons to deceive the revenue. In her opinion, the view of the Commissioner was unsustainable. She, accordingly, allowed the appeal and set aside the order of the Commissioner. The Member (Technical), however, did not

agree with the view of the Member (Judicial) fully. According to him, the cancellation of clearing house agent licence was harsh but the forfeiture of the security amount of Rs.25,000/- ordered by the Commissioner was justified. He, accordingly, allowed the appeal in part by upholding the forfeiture of the security deposit of Rs.25,000/-.

3. Since there was difference of opinion between the two Members, reference was made to third Member. The third member concurred with the view of the Member (Judicial).

4. In our view, the concurrent view of Member (Judicial) and the third Member is based on the finding that there was no legal evidence to establish that the concerned clearing house agent was party to the fraudulent activities and that he actively associated himself with the import or any other persons to deceive the revenue. The finding is concluded on facts. No substantial question of law arises.

5. Appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)